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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 504

THE UNITED STATES, PETITIONER

vs.

DOUGLAS CLYDE MACINTOSH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 7, 1930.
CERTIORARI GRANTED NOVEMBER 24, 1930

(35426)

SUPREME COURT OF THE UNITED STATES

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Form 2202
U. S. DEPARTMENT OF LABOR
NATURALIZATION SERVICE

No. 12712

UNITED STATES OF AMERICA

DECLARATION OF INTENTION

☞ Invalid for all purposes seven years after the date hereof

DISTRICT OF CONNECTICUT
COUNTY OF NEW HAVEN } ss:

In the UNITED STATES DISTRICT Court of DISTRICT OF CONNECTICUT

I, DOUGLAS CLYDE MACINTOSH, aged 40 years, occupation Professor - Yale University, do declare on oath that my personal description is: Color WHITE, complexion fair, height 5 feet 7½ inches, weight 150 pounds, color of hair brown & grey, color of eyes hazel, other visible distinctive marks NONE

I was born in Brookdalbane, Ontario, Canada

on the 18th day of February, anno Domini 1877; I now reside at Corner Elm and College Sts., New Haven, Connecticut

(Give number, street, city or town, and State)

I emigrated to the United States of America from Liverpool

on the vessel ST. PAUL; my last foreign residence was Monks Horton, England; I am not married; the name of my {wife / husband} is ; {she / he} was born at

and now resides at

It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to GEORGE V, KING OF GREAT BRITAIN AND IRELAND

of whom I am now a subject; I arrived at the port of NEW YORK in the State of NEW YORK, on or about the 1st day of November, anno Domini 1916; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein: SO HELP ME GOD.

DOUGLAS CLYDE MACINTOSH
(Original signature of declarant)

Subscribed and sworn to before me in the office of the Clerk of said Court this 16th day of February, anno Domini 1918.

{SEAL}

O. E. FICKETT
Clerk of the UNITED STATES DISTRICT Court

No. 12712

By D. GOLDBERG, Deputy Clerk.

IMPORTANT NOTICE TO APPLICANT.—It is VERY IMPORTANT that this Form be CAREFULLY AND COMPLETELY FILLED IN. When filled in or made it and your "FINAL PAPERS" to the NATURALIZATION EXAMINER'S ADDRESS given below.

PRELIMINARY FORM FOR PETITION FOR NATURALIZATION 5/19/29

DO NOT BE FILLED IN BY ALIEN

U.S. DEPARTMENT OF LABOR
NATURALIZATION SERVICE

This form is NOT a petition, but is used to obtain essential information, which must be furnished by the applicant BEFORE a petition may be filed.

FEE.—Need no fee to be collected by the Bureau of Naturalization.

Form 2224
Filed 5/19/29

TO THE ALIEN: Fill in all the blanks in this form. Be sure the information is correct. When completed, take or mail it to the Naturalization Examiner and he will furnish you instructions. Bring your Declaration of Intention with this form.

Take or mail this to—

THE UNITED STATES NATURALIZATION EXAMINER,
307 Federal Building, New Haven, Ct.

I desire to petition for naturalization in the New Haven, Connecticut Court at New Haven (City) or New Haven P.O. Bldg. New Haven, Conn. (State) The following information is furnished that you may arrange for my preliminary examination, and that the necessary papers may be sent to the Clerk of Court.

My full, true, and correct name is [Mr. / Mrs. / Miss] Douglas Clyde Macintosh

I have NEVER used another name / at one time I spelled the surname Mc Intosh (If has ever used any other name, give it.)

I used that name because my father spelled his name that way

The name on my citizenship ticket was Douglas Clyde Macintosh (I suppose; perhaps only initials.)

My mother's maiden name was Elizabeth Charlotte Averell

1. My present address is Edwards Hall, Yale University and New Haven. (City or town) (County) (State)
My past address is 2115 Yale Station, New Haven, Conn. (Number and street) (City or town) (County) (State)

2. My present occupation is Professor of Theology, Yale University

3. I was born on February 18,1877 at Brandalbane, ont., Canada (Month) (Day) (Year) (City or town) (County)

4. (a) The place where I last left the city or town which landed me in the United States was Southampton, England

on November 1st 1916 (Month) (Day) (Year)

(b) I landed in the United States at New York on November 18 1916 (Month) (Day) (Year)

(c) The name of the city or railroad on which I came was St. Paul

(d) If by ship: Name of citizenship then was American I came by [ ] or [ ] Iowa class boat, I think.

(e) I entered as (passenger, emigrant, citizenship seaman, or otherwise) Passenger

(f) The person in the United States I was coming to was Yale University, where I was Professor

(g) The place in the United States I was going to was New Haven

(h) The names of some of the persons or passengers I traveled with were Mr. Ross and family of Scotland.

(i) I purchased the ticket on which I came to this country at London, I think.
It was purchased by Myself.
(Name) (Location)

If you came from or through Canada or Mexico, also fill in items (A) to (F), inclusive.

(A) The place in Canada where I landed was _____ on _____ (Month) (Day) (Year)

(B) The place in (Canada / Mexico) from which I entered the United States was _____

(C) On _____ (Month) (Day) (Year)

(D) The place where I was examined for admission into the United States was _____

(E) If not examined, state why, and give the circumstances of your entry _____

(F) The place in (Canada / Mexico) where I bought my railroad ticket to come to the United States was _____

9

(If you came to the United States on visa, not to stay, please go over, and give data.)

2. (a) The date of my Declaration (first paper) of February 18, 1925.

(b) It was made in the New Haven Pl. Co. Court, located at New Haven, Conn.

(This city or town) (County) (State)

3. (a) I am _____ married. My (wife's / husband's) name is Rose Conklin MacIntosh

(b) (I / She) was born April 28, 1887 at Dowagiac Mich., U.S.A.

(Month) (Day) (Year) (City or town) (State) (Country)

(c) And now resides at 88 Woodland St., New Haven Conn.

(Number and street) (City or town) (State)

(d) We were married on July 1, 1915

(Month) (Day) (Year)

4. (a) I have ___Two___ children. (Do the following blanks write name, date and place of birth, and residence of each child)

_____ born _____ day of _____, 19__, at _____

resides at _____

_____ born _____ day of _____, 19__, at _____

resides at _____

_____ born _____ day of _____, 19__, at _____

resides at _____

_____ born _____ day of _____, 19__, at _____

resides at _____

_____ born _____ day of _____, 19__, at _____

resides at _____

(b) If not here, have you ever been married? _____ Are you divorced? _____

5. The foreign country of which I am now a subject or citizen is Canada.

6. I am _____ years old. Height _____

7. (a) I have resided continuously in the United States since 18 November 1916, except for service in (Date) Y.M.C.A. Sweden in 1918 and

(b) I have resided continuously in the State where I now live since 18 November 1916 brief trips to Canada

(Date) (Day) (Year)

10. I have ___not___ previously made petition for naturalization (second paper). That is was made to the _____ (Name of court)

Court at _____ (City or town) (State) on _____ (Date) and was not granted because

_____

11. If you wish to have your name changed, give full name you desire _____

12. Give names, occupations, and addresses of the two citizens you expect to use as witnesses. (If either witness is foreign-born, he must bring proof of citizenship.) These witnesses must have personal knowledge of your residence in the State or Nation, and of your good character, and must appear with you for examination.

(a) John C. Archer (Name) Professor (Occupation) New Haven, Conn. (Address)

(b) Dexter M. Fiennes (Name) Professor (Occupation) New Haven, Conn. (Address)

If applicant is a married woman, answer the following:

My husband was _____ naturalized on _____ (Month) (Day) (Year) at _____ (Place) (State)

Sub. Geo. A. Dalzell. Professor New Haven, Conn.

My first entry was in the fall of 1904, to attend the University of Chicago as a Graduate Student. I returned to Canada in 1907 and was a resident there till 1909, when I came to New Haven. There was some trouble about finding any record of my entry in 1909, so I am putting the date of entry as 1916, when I returned to the United States from service as a Chaplain in the Canadian Army in England and France.

D. C. MacIntosh.

32. Sign your full and correct name in your own handwriting: DOUGLAS CLYDE MACINTOSH

Sign name you are now using: DOUGLAS CLYDE MACINTOSH

34. (a) In what place in the United States did you meet for the first time the first witness named? New Haven (City or town)

New Haven, Conn. (County) (State) On what date? Sept. or Oct. 1909. (Month) (Day) (Year)

(b) How often did you see this witness each month during the five years just before the date of this statement? (Almost every day except in the summer.)

At what places? Edwards Hall, Yale Univ.

35. (a) In what place in the United States did you meet for the first time the second witness named? New Haven. (City or town)

New Haven, Conn. (County) (State) On what date? I am not sure; before 1916. (Month) (Day) (Year)

(b) How often did you see this witness each month during the five years just before the date of this statement? About twice a month or oftener.

At what places? First Baptist Church, Yale Graduates' Club, and at his home.

36. (a) Have you been absent from the United States since the day you have before stated for your arrival? Yes.

If so, state month and year you left May 1918; month and year you returned Dec. 1918.

To what country did you go? France and England What was your reason for going? YMCA army service. I have also gone to Canada about once a year for about a week sometime during the last 10 years to lecture on my writing and visit

(b) In what places in the United States have you resided since your arrival? (Give places in chronological order, beginning and ending of residence.)

Place. (City or town)	(State)	From (Month and year)	to (Month and year)
New Haven,	Conn.	Nov. 1916	July 1927

37. What were the names and addresses of your employers during the five years prior to the date of this statement?

(Employer's name)	(State)	(No. and street)	(City)	(State)
Yale University (continuously)			New Haven,	Conn.

18. Do you understand the principles of government of the United States? Fairly well, I think.

19. Do you fully believe in the form of government of the United States? In a general way, yes.

20. Have you read the following oath of allegiance? Yes.

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to _____, of whom I have heretofore been a subject; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same."

Are you willing to take this oath in becoming a citizen? Yes.

21. Are you a believer in the practice of polygamy? No. Are you a believer in anarchy? No.

Do you belong to any organization which teaches or advocates anarchy or the overthrow of existing civil government in this country? No.

22. If necessary, are you willing to take up arms in defense of this country? Yes, but I should want to be free to judge of the necessity.

23. Did you file a questionnaire with a draft board during the war? No. If so, answer the following: Date filed _____ In _____ Address at that time _____

Address of draft board _____ Board division No. _____

Your order No. _____ Your serial No. _____ Class in which you were placed _____

Division _____ Date of classification _____ Did you claim exemption because you were an alien? No For any other reason? No Why? The question never came up.

24. Have you ever been arrested? No. Have you ever been charged with a violation of the prohibition law or any other law of the United States, or State, or of any city ordinance? No. If so, give particulars _____

25. Have you ever been an inmate of an insane asylum? No Have you ever been dependent upon public charity? No.

26. Did you yourself fill out this form? Yes. If not, who filled out this form for you? _____

27. I paid head tax and was inspected for admission into the United States at _____, on _____

I, the undersigned, having carefully read the questions herein, certify on honor that my answers thereto are true.

(Sign name in full) DOUGLAS CLYDE MACINTOSH
(Applicant)

Date July 7th, 1927 3115 Yale Station, New Haven, Conn.
(Post office address) (City) (State)

Form 145

CERTIFICATE OF ARRIVAL - FOR NATURALIZATION PURPOSES

(This certificate is for the use of the person applying for it only, and is issued for naturalization purposes in compliance with the Act of June 29, 1906, sec. 4, subd. 2, par. 4, requiring a certificate from the Department of Labor stating the date, place, and manner of arrival in the United States.)

U. S. DEPARTMENT OF LABOR

Bureau of Naturalization

Certificate of Arrival Division

Ellis Island, New York

OCT 1 - 1927

This is to certify that the following-named alien arrived in the United States on the date and in the manner described below, at Ellis Island, New York.

Name of alien: Macintosh, Douglas C.
Date of arrival for permanent admission: November 12, 1916

Manner of arrival: St. Paul

By Direction of the Secretary of Labor:

RAYMOND F. CRIST

Commissioner of Naturalization.

Issue No. 444662

AFFIDAVITS OF PETITIONER AND WITNESSES

Form 2204-2

U. S. DEPARTMENT OF LABOR
NATURALIZATION SERVICE

ORIGINAL

No. 9886

UNITED STATES OF AMERICA

PETITION FOR NATURALIZATION

To the Honorable the United States Dist Court of District of Connecticut at New Haven

The petition of DOUGLAS CLYDE MACINTOSH hereby filed, respectfully sheweth:

First. My place of residence is Edwards Hall, Yale University, New Haven, Conn. (2115 Yale Station)
(Give number, street, city or town, and State)

Second. My occupation is Professor of Theology

Third. I was born on the 18th day of February anno Domini 1877 at Brandalbane, Ontatio, Canada

Fourth. I emigrated to the United States from Southampton, England on or about the 1st day of November anno Domini 1916, and arrived in the United States, at the port of New York on the 12th day of November anno Domini 1916, on the vessel St. Paul
(If the alien arrived otherwise than by vessel, the character of conveyance or name of transportation company should be given.)

Fifth. I declared my intention to become a citizen of the United States on the 18th day of February 1925. at New Haven, Conn. to the U. S. District Court of District of Connecticut

Sixth. I am ____ married. My {wife's / husband's} name is Hope ____, {she / he} was born on the 25th day of April 1867 at Dowagiac, Michigan, and now resides at said New Haven, Connecticut.
(Give number, street, city or town, and State)

I have no children, and the name, date, and place of birth, and place of residence of each of said children is as follows:

Seventh. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to George V, by the Grace of God, of G.B. Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, of whom at this time I am a subject, and it is my intention to reside permanently in the United States.

Eighth. I am able to speak the English language.

Ninth. I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since the 12th day of November, anno Domini 916, and in the State of Connecticut continuously next preceding the date of this petition, since the 12th day of November, anno Domini 916, being a residence within this State of at least one year next preceding the date of this petition.

Tenth. I have not heretofore made petition for citizenship to any court. (Strike out inapplicable clauses.) Petition ____ and ____, on the ____ day of ____, ____ (Name of Court) ____ (Give Docket No.) ____ (Disposition of petition.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Labor, together with my affidavit and the affidavits of the two witnesses thereto, required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

DOUGLAS CLYDE MACINTOSH

Eighth. I am able to speak the English language.

Ninth. I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since the 18th day of November, anno Domini 1916, and in the State of Connecticut continuously next preceding the date of this petition, since the 18th day of November, anno Domini 1916, being a residence within this State of at least one year next preceding the date of this petition.

Tenth. I have not heretofore made petition for citizenship to any court. [illegible] showing of record that on the ___ day of ___, Anno Domini ___ the said applicant [illegible]

[illegible]

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Labor, together with my affidavit and the affidavits of the two verifying witnesses thereto, required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

DOUGLAS CLYDE MACINTOSH
(Complete and true signature of petitioner.)

Declaration of Intention No. 18712 and Certificate of Arrival from Department of Labor filed this 18th day of March, 19 29

Note to Clerk or Court.—If petitioner arrived in the United States on or between June 29, 1906, strike out the words reading "and Certificate of Arrival from Department of Labor."

AFFIDAVITS OF PETITIONER AND WITNESSES

District of Connecticut
New Haven } ss:

The aforesaid petitioner being duly sworn, deposes and says that he is the petitioner in the above-entitled proceedings; that he has read the foregoing petition and knows the contents thereof; that the said petition is signed with his full, true name; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

DOUGLAS CLYDE MACINTOSH
(Complete and true signature of petitioner.)

John C. Archer, occupation Superintendent of Buildings, residing at New Haven, Conn.
and George H. Pierson, occupation Professor, residing at New Haven, Conn.
each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known Douglas Clyde Macintosh, the petitioner above mentioned, to have resided in the United States continuously immediately preceding the date of filing his petition, since the 1st day of December, anno Domini 1916, and in the State in which the above-entitled petition is made continuously since the 1st day of December, anno Domini 1916; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that the petitioner is in every way qualified, in his opinion, to be admitted a citizen of the United States.

So

J. C. Archer
(Signature of witness.)

G. H. Pierson
(Signature of witness.)

Subscribed and sworn to before me by the above-named petitioner and witnesses in the office of the Clerk of said Court this 18th day of March, anno Domini 19 29 [SEAL]

C. R. PICKETT, Clerk.
By D. GOLDBERG, Deputy Clerk.

[print]
32870—21. (Face p. T). No. 1

IN THE MATTER OF THE PETITION OF

DOUGLAS CLYDE MACINTOSH

TO BE ADMITTED A CITIZEN OF THE UNITED STATES OF AMERICA.

Filed March 18, 1929

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to George V, by the Grace of God, of G. B, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India. of whom I have heretofore been a subject; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same.

DOUGLAS CLYDE MACINTOSH

Subscribed and sworn to before me, in open Court, this _____ day of _____, A. D. 19____

_____, Clerk.

NOTE—In renouncing all title of nobility, add the following to the oath of allegiance before it is complete: "I further renounce the title of (give title), an order of nobility, which I have heretofore held."

ORDER OF COURT ADMITTING PETITIONER

Upon consideration of the petition of _____, and affidavits in support thereof, and further testimony taken in open Court, it is ordered that the said petitioner, who has taken the oath required by law, be, and hereby is, admitted to become a citizen of the United States of America, this _____ day of _____, A. D. 19____

It is further ordered, upon consideration of the petition of the said _____ that his name be, and hereby is, changed to _____, under authority of the provisions of section 6 of the act approved June 29, 1906 (34 Stat. L., pt. 1, p. 596), as amended by the act approved March 4, 1913, entitled "An act to create a Department of Labor."

By the Court:

_____, Judge.

ORDER OF COURT DENYING PETITION

Upon consideration of the petition of DOUGLAS CLYDE MACINTOSH and the motion of the examiner for the United States in open Court this 24th day of June, 1929, it appearing that petitioner refused to take unqualified oath.

THE SAID PETITION IS HEREBY DENIED.

ORDER OF COURT ADMITTING PETITIONER

Upon consideration of the petition of _____, *and affidavits in support thereof, and further testimony taken in open Court, it is ordered that the said petitioner, who has taken the oath required by law, be, and hereby is, admitted to become a citizen of the United States of America, this* _____ *day of* _____, *A. D. 19*____.

It is further ordered, upon consideration of the petition of the said _____, *that his name be, and hereby is, changed to* _____, *under authority of the provisions of section 6 of the act approved June 29, 1906 (34 Stat. L., pt. 1, p. 596), as amended by the act approved March 4, 1913, entitled "An act to create a Department of Labor."*

By the Court:

_____, *Judge.*

ORDER OF COURT DENYING PETITION

Upon consideration of the petition of DOUGLAS CLYDE MACINTOSH *and the motion of* the examiner

for the United States in open Court this 26th *day of* June, *19*29, *it appearing that* petitioner refused to take unqualified oath.

THE SAID PETITION IS HEREBY DENIED.

DENIED, *Judge.*

MEMORANDUM OF CONTINUANCES

AFFIDAVITS OF PETITIONER AND WITNESSES — REASONS FOR CONTINUANCE

Continued from _____, *19*____ _____

to _____, *19*____ _____

Continued from _____, *19*____ _____

to _____, *19*____ _____

NAMES OF SUBSTITUTED WITNESSES

Geo. A. Baitsell, *occupation* Professor, *residing at* New Haven, Conn.

_____, *occupation* _____, *residing at* _____

Certificate of Naturalization, No. _____, *issued on the* _____ *day of* _____, *A. D. 19*____.

[ADDRESS OF PETITIONER KEPT CONFIDENTIAL AND CHANGES OCCURRING AFTER FILING AND BEFORE NATURALIZATION]

22870—21. (Face p. 7). No. 2

Form 2213

Petition No. _____

(To be pasted on the back of the petition before the oath of each attesting witness. See Rule 28, Naturalization Regulations, 1913)

AFFIDAVIT OF WITNESSES

_____ District Court of United States,

In the matter of the petition of Douglas Clyde Macintosh to be admitted a citizen of the United States of America.

District of Connecticut
New Haven
} ss.

George Dahl, a witness produced Professor, residing at New Haven, Ct.

and _____, a witness produced _____, residing at _____

each being separately, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known Douglas Clyde Macintosh, the petitioner above mentioned, to have resided in the United States continuously immediately preceding the date of filing his petition, since the 12th day of November, anno Domini 1916, and to this said to which the above entitled petition is made continuously since the 12th day of November, anno Domini 1916, and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that the petitioner is in every way qualified, in his opinion, to be admitted a citizen of the United States.

George Dahl
(Subscribing witness)

_____
(Subscribing witness)

Subscribed and sworn to before me by the above-named witnesses in the office of the said of said court this 19th day of June, anno Domini 29.

[SEAL.]

C. B. Pickett, Clerk.

By H. M. Tyler, Deputy Clerk.

THE UNITED STATES VS. DOUGLAS CLYDE MACINTOSH

11 In United States District Court, District of Connecticut

Memorandum re questions 19, 20, and 22

NEW HAVEN, CONN., *June 10, 1929.*

Memorandum submitted to the judge of the United States District Court at New Haven, Conn.

I wish to make clear the interpretations which I must put upon questions 19, 20, and 22 in the preliminary form for petition for naturalization if I am to be able to answer these questions in the affirmative.

19. I believe in the general form of the Government of the United States, but I do not regard it as in all respects ideal. I am inclined to think that an adaptation of what is known in municipal government as the "city-manager plan" might be better than the present system.

20 and 22. I am willing to do what I judge to be in the best interests of my country, but only in so far as I can believe that this is not going to be against the best interests of humanity in the long run. I do not undertake to support "my country, right or wrong" in any dispute which may arise, and I am not willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not "take up arms in defence of this country," however "necessary" the war may seem to be to the
12 Government of the day. It is only in a sense consistent with these statements that I am willing to promise to "support and defend" the Government of the United States "against all enemies foreign and domestic." But, just because I am not certain that the language of questions 20 and 22 will bear the construction I should have to put upon it in order to be able to answer them in the affirmative, I have to say that I do not know that I can say "Yes" in answer to these two questions.

Respectfully submitted.

DOUGLAS CLYDE MACINTOSH.

In United States District Court

Memorandum entitled "War Record"

WAR RECORD OF D. C. MACINTOSH

1. In September, 1914, he wrote the Canadian Minister of Militia, saying that he would not give up his Canadian citizenship before the end of the war, and intimating that his services would be given whenever called for.

2. In June, 1916, on the basis of letters from Dean Brown and ex-President Taft to the Canadian Minister of Militia, he was appointed chaplain in the Canadian Army, and served with that army in England and France until November of that year. He was

13 with the Second Canadian Division near Vimy Ridge and with the Fourth Canadian Division during a part of the battle of the Somme. In September he had cabled asking for an extension of leave from Yale University that he might continue his service with the army in France for at least another year, but the permission asked was not granted.

3. In 1917 he applied for reappointment as chaplain but was informed that the practice of appointing chaplains for a definite period of service had been discontinued.

4. In May, 1918, he joined the American Y. M. C. A. for service with the Army and was in the war work of the Y. M. C. A. until after the amistice went into effect. At the end of the war and for some time before that time he was in charge of the Y. M. C. A. hut at the front in the St. Mihiel region.

In United States District Court

Excerpt from Who's Who in America

[Who's Who in America, 1926–1927]

MACINTOSH, DOUGLAS CLYDE, prof. theology; b. Breadalbane, Ont., Can., Feb. 18, 1877; s. Peter and Elizabeth Charlotte (Everett) M.; McMaster U., Toronto, 1903; Ph. D., U. of Chicago, 1909; m. Emily Powell, of Marion, Ind., Feb. 13, 1921 (died Nov. 2, 1922); m. 2nd, Hope Griswood Conklin, of Cambridge, Mass., July 1, 1925.
14 Instr. philosphy, McMaster U., Toronto, 1903–04; ordained Bapt. ministry, 1907; prof. Bibl. and systematic theology, Brandon (Manitoba) Coll., 1907–09; prof. systematic theology, 1909–16, Dwight; prof. theology since 1916, Yale U. Chmn. dept. of religion, Yale Grad. Sch. Chaplain, rank of capt., Can. E. F., in Eng. and France, 1916; Y. M. C. A. sec. with A. E. F., in France, 1918. Mem. Am. Philos. Assn., Am. Theol. Soc. Club: Graduate. Author: The Reaction Against Mataphysics in Theology, 1911; The Problem of Knowledge, 1915; God in a World at War, 1918; Theology as an Empirical Science, 1919. Editor of G. B. Foster's Christianity in Its Modern Expression, 1921; The Reasonableness of Christianity, 1925. Home: 25 Woodlawn St., New Haven, Conn.

In United States District Court

Statement of facts and order approving same

Since no stenographic record of the proceedings before the naturalization examiner or the court was made, a statement of the facts which were substantially presented to the court in connection with this petition has been prepared, as follows:

In the fall of 1904 the applicant entered the United States to become a graduate student at the University of Chicago. In 1907 the applicant was ordained as a Baptist minister. In the same year

he returned to Canada, where he was engaged in teaching for two years. In 1909 he returned to the United States to fill a teaching position in Yale University. Within the first year of his residence in New Haven the applicant made a formal declaration of his intention of becoming a citizen of the United States. It was necessary to wait for five years before taking out final naturalization papers, and shortly before the five-year period was up Great Britain and the Dominion of Canada had become involved in the war with Germany. Believing that he ought not to give up his British allegiance while his country was at war, the applicant wrote to the Canadian Minister of Militia, in September, 1914, stating that he would not give up his Canadian citizenship before the end of the war, and giving his New Haven address in order that his services might be called for when needed. No call for his services having come, in the spring of 1916 he wrote to Ottawa, applying for an appointment as chaplain in the Canadian Army for overseas service, and offering his services without remuneration. Early in June, 1916, the applicant received his appointment as chaplain and proceeded to England, where he served in the First Canadian Command depot, and afterwards to France, where he saw service at the front in the neighborhood of Vimy and in the battle of the Somme.

In the early fall of 1916 the applicant cabled to his dean requesting leave of absence from the university so that he might continue his services as chaplain in the army. This request was not granted, and he returned to America in November, 1916. In the spring of 1917 he applied for reappointment as chaplain, but was informed that the practice of making temporary appointments had been discontinued. During this year the applicant made about forty public addresses in support of the cause of the western Allies. In the spring of 1918 he joined the American Y. M. C. A. for overseas service, and in May proceeded to France, where he was engaged in war service at several points, his final service being in charge of a "Y" hut at the front in the St. Mihiel region, where he remained until after the armistice went into effect.

By the time the war was over the applicant's "first papers," declaring his intention of becoming a citizen of the United States, had become null and void, by reason of the lapse of more than seven years since they had been taken out. In February, 1919, he took out his "first papers" a second time, and was now required to wait for two years before being allowed to take out his final papers. However, there was a delay in obtaining these final papers because of the difficulty of verifying the entrance of the applicant into the country. Later it became necessary to cancel his first papers in order to secure a British passport for a longer period than three months in view of a contemplated trip to the Orient, it being impossible to become an American citizen in time to secure an American passport for this trip. For the purposes of this petition the

applicant decided to give, as the date of his legal entry into the United States, November, 1916, this being the date of his return from overseas service in the Canadian Army. This was done
17 in the hope that the Immigration Bureau might have a record of this entry and thus be able to verify the fact that he had come into the country.

At the hearing the preliminary form for petition for naturalization signed by the petitioner was exhibited to him. In this preliminary form he had answered in reply to question 22, which reads "If necessary, are you willing to take up arms in defense of this country?" "Yes; but I should want to be free to judge as to the necessity." There was also exhibited to the petitioner a statement entitled Memorandum Submitted to the Judge of the United States District Court at New Haven, which had been prepared and presented by the petitioner at the preliminary hearing before the naturalization examiner on June 10, 1929. Both of these documents are part of the record for appeal. In answer to questions 19, 20, and 22 of the preliminary form for petition for naturalization, which read—

"19. Do you fully believe in the form of government of the United States?

"20. Have you read the following oath of allegiance: 'I hereby declare on oath that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to , to whom I have heretofore been a subject; that I will defend the Constitution and laws of the United States of America against all enemies, foreign or domestic;
18 and that I will bear true faith and allegiance to the same'—are you willing to take this oath in becoming a citizen?

"22. If necessary, are you willing to take up arms in defense of this country?"

the petitioner stated in the memorandum:

"I wish to make clear the interpretations which I must put upon questions 19, 20, and 22 in the preliminary form for petition for naturalization if I am to be able to answer these questions in the affirmative.

"19. I believe in the general form of Government of the United States, but I do not regard it as in all respects ideal. I am inclined to think that an adaptation of what is known in municipal government as the "city-manager plan" might be better than the present system.

"20 and 22. I am willing to do what I judge to be in the best interests of my country, but only insofar as I can believe that this is not going to be against the best interests of humanity in the long run. I do not undertake to support "my country, right or wrong," in any dispute which may arise, and I am not willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not 'take up arms in defense of this country,' however 'necessary' the war may seem to be to the Government of the day.

19 "It is only in a sense consistent with these statements that I am willing to promise to 'support and defend' the Government of the United States against all enemies, foreign and domestic.' But, just because I am not certain that the language of questions 20 and 22 will bear the construction I should have to put upon it in order to be able to answer them in the affirmative, I have to say that I do not know that I can say 'Yes' in answer to these two questions."

In regard to this memorandum the petitioner at the hearing before the court testified that the statements contained in said memorandum as to the interpretation he wished to place on questions 19, 20, and 22 in the preliminary form for petition for naturalization expressed the views he held upon these matters, but he further explained that he was not inclined to emphasize the latter part of his statement in connection with question 19, and that he believed that any changes he might think desirable in the form of government should be made only by legal and constitutional means. He further declared that he was not a pacifist, and that if allowed to interpret the oath of allegiance for himself—and he added that no one could be expected to take it without interpreting it—he would interpret it as not inconsistent with his position and would take this oath. He stated that he would answer question 22 in the affirmative only on the understanding that he would have to believe that the war was morally justified before he would take up arms in it or give it his moral support.

20 In answer to a question the applicant replied that, in his opinion, his first allegiance was to the will of God, defined as what was morally right and for the ultimate well-being of humanity, and that after that he would put allegiance to one's country as coming before all merely individual and private interest. He stated further that he was ready to give to the United States, in return for citizenship, all the allegiance he ever had given or ever could give to any country, but that he could not put allegiance to the government of any country before allegiance to the will of God. The applicant explained that if he were to be a citizen of the United States he would recognize special duties and obligations by virtue of that citizenship over and above his general duty to humanity as such. The applicant believed that the international outlook he advocated would not mean the doing away of nationalism. The applicant believed that only by being a patriotic citizen of his own country would he be in a position to work most effectively for human well-being in general, just as he believed that, all other things being equal, it would not be by overlooking special duties to his own family and to other local groups that he could best promote the well-being of the community.

He added that even if his country were to engage in what he had to regard as an unjustified war he would still regard himself as

under moral obligation not to do anything that would injure his country, but rather to try to act for the true well-being of his
21 country, though not against the true well-being of mankind in general.

It would be difficult to state in detail before the event just what this would involve, but while the applicant did not anticipate engaging in any propaganda against the prosecution of a war which the Government had already declared and which it considered to be justified, he preferred not to make any absolute promise at the time of the hearing because of his ignorance of all the circumstances which might affect his judgment in reference to such a war. In any case he did not question that the Government, under certain conditions, could regulate and restrain the conduct of the individual citizen even to the extent of imprisonment. The applicant recognized the principle of the submission of the individual citizen to the opinion of the majority in a democratic country, but he did not believe in having his own moral problems solved for him by the majority. The applicant testified that the position taken was the only one he could have taken consistently with his moral principles and with what he understood to be the moral principles of Christianity.

When asked by the judge if he did not think it would be disastrous to the cause of good government if citizens generally should make their willingness to bear arms dependent upon their individual views with respect to the justice of the causes and reasons underlying the declaration of war, the applicant replied that he did not
22 think so, but believe, on the contrary, that it would be a very good thing if all citizens were to put allegiance to the will of God and the welfare of humanity first, and next to that their allegiance to their country and its Government. If they did so, they would not violate the Constitution and laws of the country for selfish private purposes, such as the satisfying of their appetites or of their desire for gain. Moreover, with regard to going to war, he thought no government of a democratic country should want to go to war without the moral support of at least a majority of its thoughtful and conscientious citizens. The applicant also stated that a citizen should have the right to be informed of the reasons for the declaration of any war. In short, while he recognized the right of the Government to restrain the freedom of the individual for the good of the social whole, he was convinced, on the other hand, that the individual citizen should have the right respectfully to withhold from the Government his military services (involving, as they probably would, the taking of human life), when his best moral judgment would compel him to do so. The applicant was willing to support his country even to the extent of bearing arms, if asked to do so by the Government, in any war which he could regard as morally justified.

While devoted to the cause of peace, the applicant stated that he was not a pacifist in the ordinary sense of that term, because

it did not seem to him that Christian principles required absolute pacifism on the part of all. What Christianity or any truly ethical system required was acceptance of the ideal of the highest
23 well-being of all persons, and intelligent and persistent devotion to the realization of that end. The applicant declared that he believed that there was a rightful place for the use of force by the Army and Navy in the exercise of police functions in national or international relations and that there were circumstances under which such force could also be justifiably used, for instance, to repel invasion, or even to defend a weaker nation. Since it would be neither wise nor right for the Nation to adopt absolute and unconditional pacifism, the applicant did not believe any moral necessity rested upon him to adopt an unconditionally pacifist position.

Inasmuch as another war would probably be so much more disastrous than the last so as to threaten the survival of civilization itself, and inasmuch as it was obviously the duty of every one to do everything he could to prevent such a catastrophe, the applicant believed it would be positively immoral to give a blanket promise beforehand to support any and every future war in which one's country might engage, when in the nature of the case it could not be known so far ahead of the time that all such wars would be morally justified.

The applicant also stated that he believed his position would help make for the peace of the world.

The petitioner offered at the hearing before the court a typewritten document entitled War Record of D. C. Macintosh and an excerpt from the publication Who's Who in America relating to himself, both of which are part of the record on appeal.

24 This statement of the facts presented to the United States District Court is hereby agreed to by counsel for the petitioner and by the assistant United States attorney at Hartford, Connecticut.

CHARLES E. CLARK,
Attorney for Petitioner-Appellant.
GEORGE H. COHEN,
Assistant United States Attorney
at Hartford, Connecticut.

This agreed statement of facts is hereby approved.

WARREN B. BURROWS,
Judge of the United States District Court,
District of Connecticut.

In United States District Court

Recommendation of examiner and order thereon

Form 2352

U. S. Department of Labor

Naturalization Service

Dated JUNE 24, 1929. List No. ____

NATURALIZATION PETITIONS RECOMMENDED TO BE DENIED

To the Honorable the District Court of the United States for the District of Connecticut, Sitting at New Haven:

The undersigned, duly designated under the act of June 8, 1926 (Public No. 358, 69th Cong.), to conduct preliminary hearings upon petitions for naturalization to the above-named court and to make findings and recommendations thereon, has personally examined under oath at a preliminary hearing each of the following: One (1) petitioner for naturalization and their required witnesses; has found, for the reasons stated below, that such petition should not be granted, and therefore recommends that each such petition be denied.

No.	Petn. No.	Name of petitioner	Reason for denial
1	9886	Douglas Clyde Macintosh	Attachment to the principles of the Constitution not shown.

Respectfully submitted.
Date, June 24, 1929.

JOHN F. DAVIS,
(Signature of designated examiner or officer)

UNITED STATES OF AMERICA,
District of Connecticut,
Sitting at New Haven Division, ss:

Upon consideration of the petitions for naturalization listed above, and the findings and recommendations thereon of a duly designated examiner or officer of the Bureau of Naturalization (or Naturalization Service), at a final hearing in open court this 24th day of June, A. D. 1929, it is hereby ordered that each of the said petitions be, and hereby is, denied.

By the court:

WARREN B. BURROWS, *Judge.*

In United States District Court

In the matter of the petition for citizenship of DOUGLAS CLYDE MACINTOSH

Final decree

January 8, 1930

This petition, together with the recommendation of John F. Davis that it be denied, came on to be heard at New Haven, Connecticut, on the 24th day of June, 1929.

27 And now, upon consideration of the petition of Douglas Clyde Macintosh, affidavits in support thereof, the findings and recommendations of John F. Davis, duly designated examiner of the Bureau of Naturalization, and the testimony of the petitioner and his witnesses in open court on said 24th day of June, 1929, it appearing that the said petitioner, considering his allegiance to be first to the will of God, would not promise in advance to bear arms in defense of the United States under all circumstances but only if he believed the war to be morally justified, it is

Decreed that the petitioner is not attached to the principles of the Constitution of the United States and further decreed that said petition for citizenship is denied.

WARREN B. BURROWS,
United States District Judge.

NEW HAVEN, CONN., *January 8th, 1930.*
Enter.

28 In United States District Court

[Title omitted.]

Petition for appeal

Filed Mar. 6, 1930

Now comes the petitioner, Douglas Clyde Macintosh, by his attorney, considering himself aggrieved by the decree of this court, dated the 8th day of January, 1930, and entered and filed in the office of the clerk of this court on the 8th day of January, 1930, in the above-entitled cause, and does hereby appeal from such decree to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the assignment of errors which is filed herewith, and said petitioner prays that the appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was made and of an agreed statement of facts prepared in accordance with Equity Rule No. 77, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit, under the rules of such court in such cases made and provided.

29 And your petitioner further prays that the proper order relating to the required security to be required of him be made.

Dated, New Haven, March 6th, 1930.

CHARLES E. CLARK,
Attorney for Petitioner-Appellant.

Office & post-office address, Yale Law School, New Haven, Connecticut.

In United States District Court

Order allowing appeal

Appeal allowed upon giving bond, as required by law, for the sum of $250.

WARREN B. BURROWS,
United States District Judge.

30 In United States District Court

[Title omitted.]

Assignment of errors

Filed Mar. 6, 1930

And now, on the 6th day of March, A. D. 1930, comes the petitioner, Douglas Clyde Macintosh, by his attorney, and says that the decree of the United States District Court at New Haven, Connecticut, entered in connection with the above-entitled cause on the 8th day of January, 1930, denying citizenship to the petitioner, is erroneous and unjust to the petitioner.

1. Because the court erred in holding that the statement of the petitioner that his allegiance was, first, to the will of God and, secondly, to his own country, proved that the petitioner was not attached to the principles of the Constitution of the United States.

2. Because the court erred in holding that the unwillingness of the petitioner to promise in advance to bear arms in defense of the United States under all circumstances, but only if he believed
31 the war to be morally justified, proved that the petitioner was not attached to the principles of the Constitution of the United States.

3. Because the court erred in holding that the answer of the petitioner to question 22 of the preliminary form of petition for naturalization in the words, "Yes; but I should want to be free to judge as to the necessity," proved that the petitioner was not attached to the principles of the Constitution of the United States.

4. Because the court erred in holding that the explanation of the petitioner of his answer to question 22 of the preliminary form of petition for naturalization, submitted to the court on June 10, 1929, proved that he was not attached to the principles of the Constitution of the United States.

5. Because the court erred in denying the petition of said petitioner on the written statements submitted and the oral answers given by the petitioner before the court, which have been made part of the agreed statement of facts filed herein.

Wherefore the petitioner prays that the said decree be reversed.

Dated, New Haven, March 6, 1930.

CHARLES E. CLARK,
Attorney for Petitioner-Appellant.

Office & post-office address, Yale Law School, New Haven, Connecticut.

32–33 [Citation in usual form showing service on George H. Cohen omitted in printing.]

34 In United States Circuit Court of Appeals

[Title omitted.]

Stipulation omitting bond from record

It is hereby stipulated and agreed that the bond on appeal should not be printed as part of the transcript of record.

Dated, March 26, 1930.

CHARLES E. CLARK,
Attorney for Petitioner-Appellant.
GEORGE H. COHEN,
Assistant United States Attorney.
Hartford, Connecticut.

35 In United States District Court

[Title omitted.]

Stipulation as to contents of record

It is hereby stipulated and agreed, by and between the parties hereto through their respective attorneys, that the transcript of record on appeal in the above-entitled petition shall include the following:

1. Declaration of intention of petitioner, dated February 18, 1925.
2. Preliminary form for petition for naturalization of petitioner, dated July 7, 1927.
3. Certificate of arrival issued by the Bureau of Naturalization of the United States Department of Labor, dated October 1, 1927.
4. Petition for naturalization of petitioner, dated March 18, 1929.
5. Affidavit of petitioner, dated March 18, 1929.

36 6. Affidavits of witnesses John C. Archer and George H. Pierson, dated March 18, 1929.

7. Affidavit of witness George Dahl, dated June 10, 1929.
8. Memorandum by the petitioner submitted to judge of the United States District Court, District of Connecticut, dated June 10, 1929.

9. Memorandum entitled War Record of D. C. Macintosh submitted to the judge of the United States District Court, District of Connecticut, at the hearing on June 24, 1929.

10. Excerpt from Who's Who in America, 1926-27, relating to the petitioner, submitted to the judge of the United States District Court, District of Connecticut, at the hearing on June 24, 1929.

11. Statement of facts which were presented to the United States District Court, District of Connecticut, at the hearing before said court on June 24, 1929, agreed to by the United States attorney at Hartford, Connecticut, and by counsel for petitioner and approved by the judge of said court.

12. Recommendation of John F. Davis, examiner of the Bureau of Naturalization, for the denial of the petition for naturalization and the order of the judge of the United States District Court, District of Connecticut, denying such petition, both dated June 24, 1929.

37 13. Final decree of the judge of the United States District Court, District of Connecticut, denying the petition for citizenship, dated January 8, 1930.

14. Petition for appeal and order of allowance of the appeal, dated and filed March 6, 1930.

15. Bond on appeal.

16. Assignment of errors, dated and filed March 6, 1930.

17. Citation addressed to United States attorney at Hartford, Connecticut, dated March 7, 1930, and acknowledgment of service thereof, dated March 8, 1930.

Dated, March 26, 1930.

CHARLES E. CLARK,
Attorney for Petitioner-Appellant.
GEORGE H. COHEN,
Assistant United States Attorney,
Hartford, Connecticut.

38 In United States District Court

[Title omitted.]

Stipulation as to record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, April , 1930.

CHARLES E. CLARK,
Attorney for Petitioner-Appellant.
GEORGE H. COHEN,
Assistant United States Attorney,
Hartford, Connecticut.

[Clerk's certificate to foregoing transcript omitted in printing.]

40 In United States Circuit Court of Appeals for the Second Circuit

DOUGLAS CLYDE MACINTOSH, PETITIONER-APPELLANT

AGAINST

UNITED STATES, RESPONDENT-APPELLEE

Before MANTON, L. HAND, and SWAN, Circuit Judges

Appeal from the District Court for the District of Connecticut. The petitioner applied for admission to citizenship of the United States. An order was entered denying his admission; petitioner appeals. Reversed.

Davis, Polk, Wardwell, Gardiner & Reed, Esqs., attorneys for appellant; John W. Davis, Esq.; Charles E. Clark, Esq., Allen Wardwell, Esq., of counsel.

John Buckley, Esq., United States attorney; George H. Cohen, Esq., asst. U. S. attorney.

Opinion

MANTON, Circuit Judge:

The appellant was born in Canada, entered the United States in 1904, and was ordained a Baptist minister in 1907 after studying in this country. He went to Canada for two years and in 1909, returned to the United States, and became a professor at Yale University, where he is still teaching.

41 After filing a declaration of his intention to become a citizen on February 18, 1925, he filed with the District Court a petition for naturalization, accompanied by the proper certificate and affidavits of witnesses. June 10, 1929, he was given a preliminary hearing before a naturalization examiner, at which time he submitted a memorandum explaining at length answers to questions which appeared in the preliminary form for the petition for naturalization. Question 22 was, "If necessary, are you willing to take up arms in defense of this country?" to which he answered, "Yes; but I should want to be free to judge as to the necessity." In his memorandum the petitioner referred to questions 19, 20, and 22 and said:

"19. I believe in the general form of the government of the United States, but I do not regard it as in all respects ideal. I am inclined to think that an adaptation of what is known in municipal government as the 'city manager plan' might be better than the present system.

"20 and 22. I am willing to do what I judge to be in the best interests of my country, but only insofar as I can believe that this is not going to be against the best interests of humanity in the long run. I do not undertake to support 'my country, right or wrong' in any dispute which may arise, and I am not willing to promise

beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not 'take up arms in defense of this country,' however 'necessary' the war may
42 seem to be to the Government of the day.

"It is only in a sense consistent with these statements that I am willing to promise to 'support and defend' the Government of the United States 'against all enemies, foreign and domestic.' But, just because I am not certain that the language of questions 20 and 22 will bear the construction I should have to put upon it in order to be able to answer them in the affirmative, I have to say that I do not know that I can say 'Yes' in answer to these two questions."

On June 24, 1929, he submitted, in addition to this memorandum, a memorandum of his war record during the World War and an excerpt from Who's Who in America. The war record showed service in the Canadian Army as a chaplain over seas in the neighborhood of Vimy Ridge and in the battle of the Somme. He returned to America in 1916 and made addresses supporting the allies, joined the Y. M. C. A., and again went to France in 1918 and took charge of a Y. M. C. A. hut at the front in the St. Mihiel region until the armistice.

The statement of facts is stipulated. It appears that the appellant stated that he was ready to give to the United States, in return for citizenship, all the allegiance he ever had given or ever could give to any country, but that he could not put allegiance to the government of any country before allegiance to the will of God. And the applicant explained that if he were to be a citizen of the United States he would recognize special duties as obligations by virtue of that citizenship over and above his general duty to humanity as
43 such. The appellant declared that he believed that there was a rightful place for the use of force by the Army and Navy in the exercise of police functions in national or international relations and that there were circumstances under which such force could also be justifiably used, for instance, to repel invasion, or even to defend a weaker nation. And he stated that since it would be neither wise nor right for the Nation to adopt absolute and unconditional pacifism, the applicant did not believe any moral necessity rested upon him to adopt an unconditionally pacifist position. It was further stipulated that the applicant believed it would be positively immoral to give a blanket promise beforehand to support any and every future war in which one's country might engage, when in the nature of the case it could not be known so far ahead of the time that all such wars would be morally justified. The applicant also stated that he believed his position would help make for the peace of the world. The court denied his application for citizenship, reciting in the decree that the petitioner is not attached to the principles of the Constitution of the United States.

The naturalization act of June 29, 1906, requires the applicant for citizenship, before admission, to declare under oath that he will

support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same. (U. S. Code, title 8, § 381.) And § 382 provides that before admission it shall be made to appear to the satisfaction of the court that during his five years' residence, preceding the application, the applicant has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. Question 22, which defendant answered in the qualified way referred to, was considered by the Supreme Court in United States vs. Schwimmer (279 U. S. 644), and the court there, in denying the applicant's admission to citizenship, stated that it is the duty of citizens, by force of arms, to defend our Government against all enemies whenever necessity arises, and this was a fundamental principle of the Constitution. The court said:

"Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defense detracts from the strength and safety of the Government. And their opinions and beliefs as well as their behavior indicating a disposition to hinder in the performance of that duty are subjects of inquiry under the statutory provisions governing naturalization and are of vital importance, for if all or a large number of citizens oppose such defense the 'good order and happiness' of the United States can not long endure. * * *" (at p. 650).

And again:

"A pacifist in the general sense of the word is one who seeks to maintain peace and to abolish war. Such purposes are in harmony with the Constitution and policy of our Government. But the word is also used and understood to mean one who refuses or is unwilling for any purpose to bear arms because of conscientious considerations and who is disposed to encourage others in such refusal. And one who is without any sense of nationalism is not well bound or held by the ties of affection to any nation or government. Such persons are liable to be incapable of the attachment for and devotion to the principles of our Constitution that is required of aliens seeking naturalization. * * *" (p. 652).

The refusal to perform military service on account of religious scruples has not been regarded as inconsistent with the duties and obligations of citizenship. But the examiner did not exceed his powers in probing into the opinions and beliefs of the appellant. The naturalization law of 1906 (U. S. Code, title 8, §§ 381–2) requires that the beliefs of an applicant in respect to his opposition to organized government should be investigated, and it is only when it appears to the satisfaction of the court that the applicant has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, that he will be admitted. And he must support and defend the Constitution and laws of the

United States against all enemies, foreign and domestic, bearing true faith and allegiance to the same. An inquiry as to whether he will willingly bear arms is a proper inquiry to ascertain where the applicant stands in the test thus laid down by the naturalization law, but it does not follow because the applicant did not answer question No. 22 categorically, but qualified his answer by the statements referred to, that he has not complied with the requirements of the naturalization law entitling him to admission. Question 22 is merely informative and necessarily directed to determine whether the applicant is attached to the principles of the Constitution
46 and laws of the United States. It will, of course, be recognized as a duty of the citizen to bear arms in defense of his country, but there is also the well-recognized qualification that a person does not lack nationalism or affection for his government if, by reason of a conscientious religious scruple, he requests being excused from bearing arms.

The historical evidence of the recognition of the right of a citizen to be excused from military service based on conscientious religious scruples is found in the provisions of some of the State statutes[1] and constitutions, as well as various acts of Congress.[2]

47 Nor is there any fixed principle of the Constitution of this country requiring a citizen with conscientious or religious scruples against bearing arms, to nevertheless bear arms in time of war. Congress has recognized that persons having conscientious scruples against bearing arms shall be exempt. (Annals of Congress, 13th Congress, 3rd session, vol. 3, pp. 774–5.) The act of 1903 (Laws of 1903, ch. 196, sec. 2; 32 Stat. 775) states that no person whose religious convictions are against war or participation therein shall be compelled to serve in the militia or other armed force. The act of June 2, 1916 (Laws of 1916, ch. 134, sec. 58, 59; 39 Stat. 197), providing that the militia shall consist of able-bodied citizens between the ages of 18 and 45, reads that "all persons who because of religious belief shall claim exemption from military service * * * shall be exempted from militia service in a combatant capacity." The selective draft act of May 18, 1917 (Laws of 1917, ch. 15, sec. 4; 40 Stat. 78), provides that a person whose religious convictions are

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[1] Georgia: Act Aug. 5, 1782, Colonial Records, ed. Candler, v. 19, pt. 2, p. 155. Maryland: Laws, March, 1778, c. 5, secs. 6 and 15; act Oct. 1780, c. 33, § 2; act Oct. 1780, c. 48, §§ 6, 19; act May, 1781, c. 15, § 7; act Nov. 1781, c. 23, §§ 14–16. Massachusetts: Resolve June 16, 1781, c. 36; Laws and Resolves, 1780–1781, p. 621. New Hampshire: Act January 18, 1777, c. 5, Metcalf's ed., vol. 4, Laws, p. 77; act of June 26, 1779, c. 19, Laws, supra, p. 219; act of June 16, 1780, c. 3, Laws, supra, p. 293; act June 27, 1780, c. 12, Laws, supra, 304. North Carolina: Laws, November, 1777, c. 19, State Records, vol. 23, p. 128. Laws of April, 1778, 1st sess., c. 1, State Records, vol. 24, p. 154. Laws of November, 1779, c. 1, State Records, vol. 24, p. 262. Laws, 1781, c. 1, State Records, vol. 24, p. 362, c. 10, State Records, vol. 24, p. 404. South Carolina: 1778, v. 4, St. L., p. 410, No. 1075, amended by act of October 9, 1778, No. 1103, 4 Stat. 453. Virginia: Act May, 1777, c. 2, 9 Hen. 276–277; act October, 1777, c. 1, 9 Hen. 339–341; act October, 1778, c. 45, 9 Hen. 588; act May, 1779, c. 19, 10 Hen. 82; act October, 1779, c. 50, 10 Hen. 214; act May, 1780, c. 12, 10 Hen. 250; act October, 1780, c. 8, 10 Hen. 336, 338; act May, 1782, c. 2, 11 Hen. 14.

[2] Constitution of Alabama, 1819; Arkansas, 1868; Colorado, 1876; Florida, 1868; Idaho, 1889; Illinois, 1818, 1870; Indiana, 1816; Iowa, 1846 and 1857; Kansas, 1855, 1857; Kentucky, 1792, 1799; Louisiana, 1879, 1898; Maine, 1819; Maryland, 1864; Michigan, 1850; Mississippi, 1817; Missouri, 1820, 1865, 1875; New Hampshire, 1792; New York, 1821, 1846, 1894; North Carolina, 1868, 1876; Pennsylvania, 1790, 1838, 1873; South Carolina, 1895; Vermont, 1793.

against war or participation therein shall not be required or compelled to serve in any of the forces but will be subject to render services of a noncombatant nature. This Federal legislation is indicative of the actual operation of the principles of the Constitution, that a person with conscientious or religious scruples need not bear arms, although, as a member of society, he may be obliged to render services of a noncombatant nature. The general policy always has been to avoid with care any compulsion which infringes on the religious scruples of anyone. "Even in the important matter
48 of bearing arms for the public defense those who can not in conscience take part are excused, and their proportion of this great and sometimes imperative burden is borne by the rest of the community." (Cooley, Constitutional Limitations, 8th ed., vol. 2, p. 983-4.)

A citizen sharing views which amount to conscientious or religious scruples against bearing arms in what he regards as an unjustified war is akin to one having conscientious scruples against all wars. There is a distinction between a morally justified and an unjustified war, as recognized in international law. (Vattel, Law of Nations, Book III, ch. 3, secs. 24, 29, 33, 34, 39; Hall, International Law, 8th ed., ch. 3, sec. 16; Wheaton, International Law, 6th ed., vol. 2, p. 630; Oppenheim, International Law, 4th ed., vol. 2, sec. 63, p. 130.) Such recognition was given in the recent Kellogg pact. It strongly lies in the desire to maintain peace and abolish war. Story in his work on the Constitution (Vol. II, sec. 1876), says: "The rights of conscience are, indeed, beyond the just reach of any human power. They are given by God and can not be encroached upon by human authority without a criminal disobedience of the precepts of natural as well as revealed religion." The rights of conscience are unalienable, which the citizen need not surrender and which the Government or society can not take away.

"'Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason'; and it is also his 'natural and unalienable right' not to be 'hurt, molested, or restrained in his person, liberty, or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion,' provided he does not disturb others." (Hale vs. Everett, 53 N. H. 9, 60.)

49 When a citizen does not bear arms without obstructing the prosecution of a war or attempting to influence others, there is no act against society. The Government will not go to the extent of forcing a citizen with conscientious or religious scruples to take up arms and commit what seem offenses to that citizen entering into warfare. The Supreme Court has said that this is a "religious Nation" (Church of the Holy Trinity vs. United States, 143 U. S. 458, 470) and that "the genius and character of our institutions are peaceful" (Fleming vs. Page, 9 How. (50 U. S.) 602, 614).

A person's declination to bear arms is not an act against peace and good order, nor contrary to the Constitution and laws of the United States, if such refusal be based upon conscientious scruples against the practice. Membership in a sect whose religious principles forbid bearing arms in warfare may be strong evidence of possessing conscientious scruples against warfare, but it is not essential to one having religious scruples asserting refusal to military service if such scruples be honestly held. (Davis vs. Beason, 133 U. S. 333; Mormon Church vs. United States, 136 U. S. 1.)

An examination of the stipulation of facts in this record justifies the argument of the appellant that his qualified answer to question No. 22 is intended only to preserve to him the right to exercise his conscientious or religious scruples when a war is declared and he is asked to bear arms. As we have seen, this is not in disobedience of the Constitution or the laws of the land.

50 No more is demanded of an alien who becomes a citizen than a natural-born citizen, and when an alien becomes a citizen he is accorded all the rights and privileges afforded to a natural-born citizen except eligibility to the presidency. (Osborn vs. U. S. Bank, 22 U. S. 737; Boyd vs. Thayer, 143 U. S. 135; Luria vs. United States, 231 U. S. 9; Tutun vs. United States, 270 U. S. 568.)

The question presented here differs from that presented in the case of Schwimmer vs. United States, supra. She stated she was an absolute atheist and said: "I am not willing to bear arms," but she was willing to do everything that an American citizen must do except fight. This applicant was willing to bear arms and reserved merely the right to determine for himself only whether the war was justified according to the dictates of his conscience. Mrs. Schwimmer said she was an uncompromising pacifist and was found to have no sense of nationalism but only a cosmic sense of belonging to the human family and opposed the use of military force as admitted by the Constitution and by the laws. She had "no nationalistic feeling." The appellant, on the other hand, was willing to give the United States "all the allegiance he ever had given or could give to any country," but that he would not put allegiance to the government of any country before his "allegiance to the will of God." This appellant, from his answers, indicates an upright sense of obligation to his God and has carefully explained his willingness to be a citizen of the United States, assuming the responsibilities and obligations of its form of government, and at the same time he has a high regard for his general duty to humanity. He wishes to keep pure his religious scruples.

51 Appellant's application for citizenship should have been granted. The order is reversed with directions to the District Court to admit appellant to citizenship.

Order reversed.

52 In United States Circuit Court of Appeals, Second Circuit

DOUGLAS CLYDE MACINTOSH, PETITIONER-APPELLANT

v.

UNITED STATES, RESPONDENT-APPELLEE

Judgment

Filed July 7, 1930

Appeal from the District Court of the United States for the District of Connecticut

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Connecticut and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby, is reversed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

WM. PARKIN, *Clerk.*

53 [Clerk's certificate to foregoing transcript omitted in printing.]

54 Supreme Court of the United States

Order allowing certiorari

Filed November 24, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Indorsement on cover:] File No. 35426. U. S. Circuit Court of Appeals, Second Circuit. Term No. 504. The United States, petitioner, vs. Douglas Clyde Macintosh. Petition for a writ of certiorari and exhibit thereto. Filed October 7, 1930. File No. 35426.

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